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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,194	02/05/2002	Germaine Caprio	31287-36223	7087
30567	7590	03/24/2004	EXAMINER	
LEON I. EDELSON, ESQ. LEVENFELD PEARLSTEIN P.O. BOX 0212 CHICAGO, IL 60690-0212			HALE, GLORIA M	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/068,194

Applicant(s)

CAPRIO, GERMAINE

Examiner

Gloria Hale

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2-5-02; 4-29-03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to because reference number 33 described in the specification is not in the figures. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the skirt, gown or dress as in claim 7; the center seam as in claim 8 and the breast pad/prosthesis as in claims 2 and 11 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities: On page 8, line 2 "weaver" should read – wearer – -. On page 10, line 17 the arm openings are reference number 35 and not 18. On page 9, paragraph 2, line 3 after "22" "ar" should read - - are- - . On page 8 paragraph 2, line 12 wherein it states "each layer sewn together to form ...etc." the description has not been clearly described. It appears that the invention is actually not a situation where each layer is sewn together but rather wherein each breast retention panel first and second (inner and outer) fabric layers are

sewn together along their panel edges at the garment seams to form a pocket there between. When the panel edges are sewn at the garment seams to form the pocket and the inner layer has an opening to provide access for the placement of a pad or prosthesis between the layers. On page 9, last paragraph the "scoop" is a "scoop" neckline and not "straps". On page 10, paragraph 3, line 7 in regard to the statement that "the breast pads stay in place" the recitation can be better described as staying in place by the stretch ability and elastic support provided by the stretchable materials of the fabric layers of the panels. On page 10, last paragraph, line 1, the breast pad pocket openings were only described as "circular openings" or "openings" and this description language change can be confusing. Also in line 4 the description of the size of the openings as "holding" the pad or prosthesis is not clearly described. On page 11, line 2 the breast pads are now described as breast pad pocket liners is confusing. It is not clear as to the shape or as to what form the pads are made or if conventional protective bust pads are used therein.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to

which it pertains, or with which it is most nearly connected, to make and/or use the invention. In regard to claim 1 in regard to the formation of the v-neckline and as described on pages 10 and 11 it is not clear as to how the "v" neckline is formed It is not clear as to how the breast retention panels are secured to the abdomen covering panel to forma v-neck opening such as whether the panels are attached on an angle or that the panels are constructed of an angled side edge to form one side of a v-neckline and also that one panel crosses over the other and that the bottom of the v-neckline is formed at the point where the panels cross. In regard to claim 10 and as described in the specification on page 9, line 10-12 it is not clear as to what portion or dimension of the "hemline" is narrowed. Is it a circumferential dimension or the height of the hemline or folded over portion of the hemline. It is therefore not clear as to how the hemline acts as a "retention means". In claim 11 and as described on page 9, paragraph 2 the written description is not clear since it is not clear as to how the "openings" themselves comprise the means of positioning, holding and supporting the breast pad or prosthesis. It is actually the elasticity of the fabric of the outer panel that retains the pad/prosthesis in the pocket in the precise location over the breast of the wearer and which should be clearly described in the specification in the last paragraph on page 9.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1 the formation of the v-neckline is not clear as discussed above. In line 10 there is no antecedent basis for "the sides. It is not clear as to which sides are being claimed such as the front, back, left, right , upper or lower. There is no antecedent basis for "the back panel sides". In line 12 after "secured to" - - a - - should be inserted therein. In lines 14-17 there is a second description of the "breast retention panels" and then as a "shoulder supported breast retention panels" which can confuse the reader since it is not clear as to whether they are the same or different. In lines 20 and 22 there is no antecedent basis for "the seam" and it is not clear as to which seam is being referred to since "a seam" has not been previously claimed. In line 25 no antecedent basis for "the back covering garment" which may actually be the "panel". In claim 2, line 2 there is no antecedent basis for "the edges". In line 4, "the opening" was already claimed in claim 1, lines 14-17.

In claim 6, line 5 the specification states that the "arm openings" are " no lower than just below the bustline". However it is not claimed as no lower than "below the bustline".

Therefore it is not clear as to exactly what location "below" defines and as to whether it is lower than "just below" as stated in the specification or if it is higher than "just below".

In claim 9, lines 5-7 beginning with "and secured..." it is noted that the language has already been stated in lines 1-3 of claim 9. In regard to claim 10 it is not clear as to what a "narrowed hemline" encompasses as discussed above. In regard to claims 2 and 11 it is not clear as to whether a breast pad prosthesis are being claimed in combination with the garment and as to whether the garment "means claimed holds or supports both or only each one as described . It is not clear as to how the "opening" holds the pad or

prosthesis. The term "any modification" renders the claim indefinite since it is not clear as to what it encompasses. The use of the term "alternatively is also indefinite in that it is not clear as to where the means itself can take on the different shapes in it one form or if the "means can be formed as any one of ...". However, the claims as best understood have been examined on their merits.

Claims 1-11 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter: None of the cited references, alone or in combination disclose the nursing garment and support bra combination with breast retention panels formed of two fabric layers wherein the second layer inner layer has an opening positioned over each breast, the panels forming a garment body with a v-neckline and also including an abdomen panel and wherein there are elastic straps positioned on the v-neckline and also on the seam between the breast retention panel and the abdomen panel as claimed in claim 1.

### ***Conclusion***

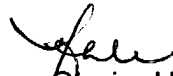
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 703-308-1282. The examiner can normally be reached on Tuesday-Friday.

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The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gloria Hale  
Primary Examiner  
Art Unit 3765

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